

BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI

AFSCME, LOCAL 410,)	
)	
Petitioner,)	
)	
v.)	Public Case No. R 99-052
)	
CITY OF FESTUS,)	
)	
Respondent.)	

JURISDICTIONAL STATEMENT

The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units by virtue of Section 105.525 RSMo. 1994. This matter arises from the election petition of AFSCME, Local 410 (hereinafter referred to as the Union), to represent certain employees of the City of Festus, (hereinafter referred to as the City). The Union seeks to represent a bargaining unit consisting of all permanent, part-time, and full-time vehicle maintenance employees, maintenance employees, public works employees, animal control employees, and building inspection employees, excluding supervisors and confidential employees.

A hearing on the matter was held on August 4, 199 in Festus, Missouri, at which representatives of the Union and the City were present. The case was heard by State Board of Mediation Chairman John Birch, Employee Member Patrick Hickey, and Employer Member Lois VanderWaerd. At the hearing, the parties were given full opportunity to present evidence and make their arguments. Afterward, the parties were given an opportunity to file briefs. The Union filed a brief in support of its position. After a careful review of the evidence and arguments of the parties, the Board sets forth the following Findings of Fact, Conclusions of Law, Order and Direction of Election.

FINDINGS OF FACT

The City is a municipality within the State of Missouri. The City has several different departments including : the Public Works Department, the Building and Zoning Department and the Animal Control Department. Since 1976, the City has been under a city administrator form of government. At the time of the hearing Richard Turley was the City Administrator. Under the city administrator form of government, the City Administrator is responsible for all personnel matters within the various city departments except the Fire Department and the Police Department. The City Administrator is responsible for all hiring, firing and employee discipline matters within those departments.

The City maintains one pay plan for all City employees. The pay plan has 30 overlapping pay grades. There are twenty steps within each pay grade. Under the pay plan it is possible for an employee in a lower pay grade to be paid more than an employee a higher pay grade. If an employee serves temporarily in a higher position, the employee is paid at the pay grade of the higher position. This increase in pay is only during the period the individual is serving in the higher position.

The City employs both full-time and part-time employees. At the time of hearing the City had part-time employees in the Fire Department, Parks Department and the Public Works Department.¹ The part-time employees work for the City from two to nine months per year. The City considers these employees part-time because they do not work for the City a full twelve months a year. In the past some part-time employees have ultimately been hired as full-time employees. The part-time employees may work for the City year after year. Apparently, some of the part-time employees have worked for the City for several years. While employed by the City, the part-time employees

work regular forty-hour weeks, five days a week, eight hours a day. The part-time employees apparently perform the same types of work as the full-time employees and are supervised by the same supervisors as the full-time employees. The part-time employees may also move from one department to another department. However, the pay and employee benefits of the full-time and part-time employees differ, but there was no evidence presented as to how they differ. The City Administrator has delegated to the head of each department the responsibility of hiring part-time employees.

The Public Works Department is composed of two sub-departments the Water and Sewer Department and the Street Department. The Public Works Department is under the supervision of the Public Works Coordinator, Jim Hughes. Mr. Hughes is a salaried employee of the City. He is at pay grade twenty-two on the City's pay plan.

Additionally, there are two Public Works Foremen, Brent Abrams and Roger Foeller. If an additional foreman is needed, one of the other workers can be appointed temporarily to serve as a foreman. In the absence of Jim Hughes, Brent Abrams serves as Public Works Coordinator. If both Jim Hughes and Brent Abrams are absent, Roger Foeller serves as Public Works Coordinator. Mr. Hughes is absent due to illness or vacation approximately six weeks a year. The foremen also occasionally attend management meetings. In addition to the Public Works Coordinator and the two Public Works Foremen, there are eighteen other workers within the Public Works Department.

The Public Works Foremen receive assignments from the Public Works Coordinator. The foremen assign men to each job. Generally, each foreman will take a work crew with them on a job. The size of a work crew will vary depending on the job, but a work crew will generally not exceed nine workers. Once on the job site, the foremen spend eighty to ninety percent of their time working alongside the men performing the same task as the other men. The workers know their jobs and generally

¹ The part-time employees in the Fire Department are permanent part-time firemen.

need little direction from the foremen. However, the foremen are responsible to see that the jobs are completed correctly and they have the authority to direct the men on the job sites. The foremen answer any questions that arise concerning the jobs. In addition, there are some employees within the Public Works Department, such as meter readers, who perform their work without supervision.

The City Administrator is responsible for hiring personnel for the Public Works Department. The foremen do not interview job applicants and they are not involved in the hiring process.

Likewise, the City Administrator is responsible for discharging employees within the Public Works Department. The foremen have no authority to discharge personnel.

Furthermore, the foremen are not involved to any great extent in employee discipline. Each City employee is responsible for reporting work rule violations. City employees are taught in employee orientation that they should report work rule violations. In the Public Works Department work rule violations are reported to the Public Works Coordinator, Jim Hughes. In Mr. Hughes absence, work rule violations are reported directly to the City Administrator. Brent Abrams has been a foremen for the City for sixteen years and he has never written up an employee for a work rule violation. In the hearing Mr. Abrams testified that he did not know that he had authority to write up an employee. Roger Foeller, has been a foreman for the City off and on for approximately nine years and he has only written up one employee. Mr. Foeller reported the work rule violation directly to the City Administrator.

The two Public Works Foremen are paid by the hour. Both foremen are at pay grade 13 on the City's pay plan. Brent Abrams is paid \$33,180 on an annualized basis. Roger Foeller is paid \$34,530 on an annualized basis.

William Gray is the City Building Commissioner/Fire Marshall. Mr. Gray supervises the City's Building and Zoning Department and is responsible for writing up department employees for work rule violations. Mr. Gray is paid a salary. He is at pay grade seventeen on the City's pay plan and is paid \$40,500 per year.

The City's Building and Zoning Department consist of just two individuals, Mr. Gray and Happy Welch. Mr. Welch is a Building Inspector/Code Enforcement Official. When Mr. Gray is absent due to illness or vacation, Mr. Welch acts as Building Commissioner.

As part of his job, Happy Welch performs building inspections and planning and zoning inspections. He also fills in for the animal control officer one weekend a month and on an emergency basis when the animal control officer is absent.

While William Gray has the authority to require Happy Welch to report all of his activities to him, Mr. Gray allows Mr. Welch to make most decisions on his own. However, Mr. Gray has the authority to overrule any decision made by Mr. Welch.

Since the Building and Zoning Department consists of only two employees, Happy Welch does not supervise any employees. Mr. Welch also does not attend management meetings. Mr. Welch is paid by the hour. He is at pay grade nine on the City's pay plan and is paid \$27,014 on an annualized basis. His rate of pay is comparable to that of a semiskilled individual.

The City's Animal Control Department consists of one individual, John Missey. Mr. Missey is the City's Animal Control Officer. John Missey reports to William Gray the Building Commissioner. Mr. Gray is responsible for writing up any work rule violation within the department.

John Missey enforces the City's animal control code. As part of his duties he patrols the City, serves complaints, and testifies in Court. Therefore, Mr. Missey performs his duties without day-to-day supervision from Mr. Gray.

Since John Missey is the only employee in the Animal Control Department, he does not supervise anyone. Furthermore, Mr. Missey has never been told he was part of management and Mr. Missey does not attend management meetings. He has also never spoken to the City Council concerning changes in City's animal control policy.

John Missey is paid by the hour. He is at pay grade six on the City's pay plan and is paid \$26,600 on an annualized basis. His rate of pay is comparable to that of a laborer.

CONCLUSIONS OF LAW

The Union seeks to represent a bargaining unit consisting of all permanent, part-time, and full-time vehicle maintenance employees, maintenance employees, public works employees, animal control employees, and building inspection employees, excluding supervisors and confidential employees.

An appropriate bargaining unit is defined in Section 105.500(1) RSMo. 1994 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

In this case, the City raises only two issues concerning the composition of the bargaining unit. First, the City objects to the inclusion of the part-time employees in the bargaining unit. Second, the City contends that the Public Works Foreman, Animal Control Officer and Building Inspector/Code Enforcement Official are supervisors and should be excluded from the bargaining unit. We will address these issues below. Prior to discussing those issues we add this caveat, we hold that in the context of this case, a unit consisting of all permanent, full-time and part-time vehicle maintenance employees,

maintenance employees, public works employees, animal control employees, and building inspection employees, excluding supervisors and confidential employees is an appropriate bargaining unit within the meaning of the Missouri Public Sector Labor Law.

We begin with the issue of the part-time employees. Regular part-time employees are considered to have a community of interest with the full-time employees and qualify for inclusion in the bargaining unit. However, casual employees do not share a community of interest with the full-time employees and therefore, are excluded from the bargaining unit. The question before the Board is whether the part-time employees in question are regular part-time employees or casual employees.

The part-time employees work for the City from two to nine months per year. The part-time employees may work for the City year after year. Some of the part-time employees have worked for the City for several years. In addition, some part-time employees have ultimately been hired as full-time employees. While employed by the City, the part-time employees work regular forty-hour weeks, five days a week, eight hours a day. The part-time employees perform the same types of work as the full-time employees and are supervised by the same supervisors as the full-time employees. The part-time employees may also move from one department to another department. However, the City Administrator testified that the pay and employee benefits of the full-time and part-time employees differ, but he did not explain how they differed. Based upon the foregoing, we hold that the part-time employees are regular part-time employees and not casual employees. They are therefore included in the unit with the full-time employees.

We now turn to the issue of whether the Public Works Foremen, the Animal Control Officer and the Building Inspector/Code Enforcement Official are supervisors. While supervisors are not specially excluded from the coverage of the Missouri Public

Sector Labor Law, case law from this Board and the courts have carved out such an exclusion. See, *Golden Valley Memorial Hospital v. Missouri State Board of Mediation*, 559 S.W.2d 581 (Mo.App. 1977) and *St. Louis Fire Fighters Association, Local 73 v. City of St. Louis*, Case No. 76-013 (SBM 1976). The rationale for this exclusion is that supervisors do not have a community of interest with, and therefore are not appropriately included in a bargaining unit comprised of, the employees they supervise. This exclusion means that supervisors cannot be included in the same bargaining unit as the employees they supervise.

This Board has traditionally used the following indicia to determine supervisory status:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters;
3. The number of employees supervised and the number of other persons exercising greater, similar and lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the person is paid for his or her skills or for his or her supervision of employees;
5. Whether the person is primarily supervising an activity or primarily supervising employees; and
6. Whether the person is a working supervisor or whether he or she spends a substantial majority of his or her time supervising employees.²

We will apply those factors here as well. Not all of the above factors need to be present for a position to be found supervisory. Moreover, no one factor is determinative. Instead, the inquiry in each case is whether these factors are present in sufficient combination and degree to warrant the conclusion that the position is supervisory.³

² See, for example, *City of Sikeston*, Case No. R 87-012 (SBM 1987).

³ See, for example, *Monroe County Nursing Home District, d/b/a Monroe Manor*, Case No. R 91-016 (SBM 1991).

A review of the factors demonstrates that the Public Works Foremen are not supervisors. The Public Works Foremen do not effectively recommend the hiring, promotion, transfer, discipline or discharge of any employee. While Roger Foeller has written up one employee, the matter had to be referred to the City Administrator. It also appears that Mr. Foeller may have been acting as the Public Works Coordinator at the time because he referred the matter to the City Administrator and not to Jim Hughes, the Public Works Coordinator.

The Public Works Foremen do assign workers to complete assignments received from the Public Works Coordinator, but the workers know their jobs and require little direction on the job site. In fact, eighty or ninety percent of the Public Works Foremen's time is spent working along side the other workers performing the same task as the other workers.

Additionally, the Public Works Foremen are paid by the hour. It also appears that the Public Works Foremen are paid more for their skills than for supervision. Brent Abrams has been a supervisor longer than Roger Foeller, but Mr. Abrams makes less than Mr. Foeller on an annualized basis.

Finally, while both Public Works Foremen have served as Public Works Coordinator at various times during the absence of Jim Hughes, this only occurs for short intervals. This temporary authority to act as Public Works Coordinator is not sufficient to give the Public Works Foremen supervisory status. *See, Professional Fire Fighters of Marshall, Missouri, Local No. 2706, A/W International Association of Fire Fighters v. City of Marshall, Missouri, Case No. 79-036 (SBM 1980).* Overall, the Public Works Foremen do not exercise sufficient supervisory authority in such combination and degree to make them supervisors. They are more analogous to lead workers. We, therefore, conclude that in this case the Public Works Foremen are not supervisors.

As for Happy Welch the Building Inspector/Code Enforcement Official, he does not supervise anyone. He has no authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of any employees. He also has no authority to direct and assign workers. He is paid by the hour and his rate of pay is comparable to that of a semiskilled individual. While Mr. Welch has served as Building Commissioner at various times during the absence of the Building Commissioner, this only occurs for short intervals. This temporary authority to act as Building Commissioner is not sufficient to give the Building Inspector/Code Enforcement Official supervisory status. *Id.* We, therefore, conclude that in this case the Building Inspector/Code Enforcement Official is not a supervisor.

Lastly, the Animal Control Officer is not a supervisor. He is in a department by himself. He supervises no one. He also has never been told he was part of management and he does not attend management meetings. He is paid by the hour and his rate of pay is comparable to that of a laborer. We, therefore, conclude that in this case the Animal Control Officer is not a supervisor.

ORDER

The State Board of Mediation finds as follows:

- (1) That a unit consisting of all permanent, full-time and part-time vehicle maintenance employees, maintenance employees, public works employees, animal control employees, and building inspection employees, excluding supervisors and confidential employees is an appropriate unit.
- (2) That the part-time employees in question are regular part-time employees and not casual employees. Accordingly, they are included in the unit.
- (3) That the Public Works Foremen, the Animal Control Officer and the Building Inspector/Code Enforcement Official are not supervisors. They are therefore included in the unit.
- (4) An election is ordered in the unit just referenced.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or its designated representative, among the employees in the aforementioned bargaining unit, as early as possible, but no later than 45 days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. The employees eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Those employees ineligible to vote are those who quit or were discharged since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible to vote shall vote whether or not they desire to have AFSCME, Local 410 as their exclusive bargaining representative.

The City shall submit to the Chairman of the State Board of Mediation, within fourteen calendar days from the date of this decision, an alphabetical list of names and addresses of employees in the aforementioned bargaining unit who were employed during the payroll period immediately preceding the date of this decision.

Signed this 19th day of October, 1999.

STATE BOARD OF MEDIATION

(SEAL)

/s/ John A. Birch

John A. Birch, Chairman

/s/ Patrick Hickey

Patrick Hickey, Employee Member

/s/ Lois VanderWaerd

Lois VanderWaerd, Employer Member